

Association of Western State Engineers Rule-Making Roundup



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Limited Rule-Making Activity

- Most rule-making effort focused on instream flow/management plans
 - See Travis Burns Instream Flow Presentation
- Other rule-making activity limited

Recent Rule-Making Efforts

- Two products – narrow in scope:
 - Water Conservancy Board Rule Change
 - Quincy Ground Water Rule Changes

Water Conservancy Board Rule Changes

- ❑ County formed Conservancy Boards process water-right transfer & change applications
- ❑ Board decisions reviewed & affirmed, reversed or modified by Ecology
- ❑ Recent rule-making addressed legislative / technical changes (training, fees, operations)
- ❑ Law & rule changes spurred partly by concern over Board operations

Quincy Ground Water Rule Changes

- Quincy Ground Water rule allows 177,000 acre-feet seeped/artificially stored water to be state permitted via Bureau agreement (Columbia River Project)
- Proposed rule amendment allows extensions to permit development schedules for projects using artificially stored ground water
- Permit extension requests would be considered on a case-by-case basis
- Current rule limits development schedule to three years
- Since all available water already permitted, rule change is choice between those seeking longer permit extension period & next applicants in line

Codes, Rules, Guidelines

Legal Lessons from Maritime Outlaws - Pirates of Caribbean

Barbossa:

- ❑ *First, your return to shore was not part of our negotiations nor our agreement, so I must do nothin'.*
- ❑ *And secondly, you must be a pirate for the Pirate's Code to apply, and you're not.*
- ❑ *And thirdly, the Code is more what you'd call "guidelines" than actual rules. Welcome aboard the Black Pearl, Miss Turner.*

Pirates of the Caribbean: The Curse of the Black Pearl (2003)

Embrace the Pirate's View

- Line between code, rule, policies, guidelines, procedures often fluid
- Choice on seeking law, rule, policy, procedure changes or go case-by-case driven by:
 - Relative benefits drawbacks of ambiguity
 - Urgency, controversy, ripeness
 - Cost
 - Availability of staff & expertise
- Water Resources Program uses Internal Policy Team to develop rules, guidelines, procedures – each section represented including 4 regions

Recent Policy (small ‘P’)

- [POL 1005](#) Internet Posting of Reports of Examination (01/01/2007)
- [POL 1040](#) Use of Terms that Clarify Relationships Between Water Rights (03/09/2006)
- [POL 1045](#) Emergency Water Source Authorization (09/15/2006)
- [POL 1050](#) Extension of Time on Water Right Permits Revised (01/20/06)
- [POL 1070](#) Administrative Confirmation of the Division of Water Rights Among Multiple Owners Revised (01/20/06)
- [POL 1210](#) Evaluation of Changes to Enable Irrigation of Additional Acreage or Addition of New Purposes of Use to Existing Water Rights Revised (02/08/06)
- [POL 2010](#) Defining and Delineation of Water Sources (02/15/2007)
- [POL 2030](#) 2003 Municipal Water Law Interpretive and Policy Statement (02/05/2007)

Policy Under Development (Small “P”)

Priority	Policy/Guidance/Procedure	Status
1	Enlargement	Draft policy - to WRAC in April 07
2	Exempt well guidance	Draft May 07 under internal review
3	POL 2020 - Heat Pumps	Revisions made to POL 2020 - ready for signature
4	Mitigation Policy	Issue paper drafted - to AG's for review May 07
5	Extensions - Changes	Issue paper drafted - to AG's for review November 06
6	Reservoir Permits	Procedure developed - in internal review
7	Water Budget Neutral Policy (Yakima Basin)	Draft distributed 6/06 - ready for adoption pending MOU completion
8	Water Duty / Quantity Allocation	Unsigned POL/PRO 1070 needs to be updated
9	Fire Flow / Water Rights Policy	Update/collate numerous drafts
10	POL 1110 - Water Reuse	Update existing policy, coordinate with Reuse Workgroup

Policy Backlog - Potential 2007 Work

POL 1200 - Water Right Transfers

Update existing policy for Sullivan Creek

WRTS Coding

Work on IPT/ITAG coordination.

Trust Water Policy

Resolve regional differences, document PMT decisions

Illegal Dams and Water Rights

Policy direction needed from PMT

Seawater water rights policy

West-side issues

Preliminary, Temporary Permit Policy

What, when, how and why

PRO 1000

Tiger Team Rule / Permit Writer's Manual Project